

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT CLARKSBURG**

WALHONDE TOOLS, INC.,

Plaintiff,

Civil Action No. 1:09-CV-48

v.

**WILSON WORKS, INC., a West
Virginia corporation, NORTHCO
CORP., a West Virginia corporation,
NAES POWER CONTRACTORS, INC.,
a successor by merger to American Boiler
& Chimney Company, a Washington
corporation, MINNOTTE
CONTRACTING CORPORATION, a
Pennsylvania corporation, FOSTER
WHEELER ZACK, INC., a Delaware
corporation, DAY & ZIMMERMAN
NPS, INC., a Delaware corporation,**

Defendants.

DEFENDANT MINNOTTE'S CLAIM CONSTRUCTION RESPONSE BRIEF

Defendant, Minnotte Contracting Corporation ("Minnotte"), files this Claim Construction Response Brief pursuant to this Court's Scheduling Order dated September 18, 2009 (Doc. No. 76).

Pursuant to the Scheduling Order, all parties were to file Markman Briefs on September 1, 2010. The Defendants each filed Markman Briefs on September 1, 2010. *See* Doc. No. 133 (Wilson Works, Inc.'s Markman Brief); Doc. No. 134 (Minnotte's

Markman Brief); Doc. No. 135 (NAES Power Contractors, Inc.'s Markman Brief); and Doc. No. 136 (Foster Wheeler Zack, Inc.'s Markman Brief).¹

However, Plaintiff failed to file any Markman brief, despite this Court's Scheduling Order.

Accordingly, Minnotte respectfully requests that this Court adopt the claim constructions set forth in the Markman briefs filed by the defendants. Moreover, Minnotte respectfully requests that Plaintiff be prohibited from disputing the claim constructions set forth in the Markman briefs filed by the defendants, in light of Plaintiff's failure to comply with this Court's Scheduling Order.

Dated: September 15, 2010

Respectfully Submitted,

By Counsel:

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and

¹ Defendant Northco has never responded to the Complaint and did not file a Markman brief. Also, it is believed that Defendant Day & Zimmerman NPS, Inc. reached a settlement prior to the September 1, 2010 Markman brief deadline.

/s/ Eric G. Soller

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon the parties by electronically filing the same with the Court's CM/ECF system, which will send notification to the following CM/ECF participants, this 15th day of September, 2010, as follows:

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